HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

-

WAMP.Nos.4531, 4532 OF 2005

AND

WA NO.44 OF 2006.

BETWEEN:

The Indian Drugs and Pharmaceuticals Ltd.,

Rep. By its Chairman, Balanagar,

Hyderabad.

…..

PETITIONER/

APPELLANT.

AND

1. Erupulla Rukkamma

And others.

….. RESPONDENTS.

:: JUDGMENT ::

Counsel for the petitioner/ : Mr. K. Srinivasa Murthy.

appellant

Counsel for the respondent Nos.1 to 9 : Mr.D.V.Reddy.

Counsel for the respondent Nos.10 to 13: G.P. for Land Acquisition.

04th JANUARY, 2006.

Per G.S. Singhvi, CJ

WAMP.NO. 4531 OF 2005:

This is an application by the appellant for condonation of 443 days delay in filing of the appeal.

Copies of the application have been supplied to the counsel for the non-applicants, but no reply has been filed.

We have heard learned counsel for the parties and perused the record. In paragraph 2 of the affidavit filed by Sri K. Ramaswamy, General Manager of the applicant's Company in support of the application for condonation of delay, the following averments have been made.

> " It is submitted that the present appeal filed against the order in W.P.No.8118 of 1995 dated 02.09.2004. It is further submitted that during the pendency of the writ petition when the matter was listed for final hearing my counsel name not printed in the cause list. As per my counsel could not appeared to argue the matter on merits. In fact the petitioner is under the impression the matter has not listed for final hearing, but the petitioner comply surprised to receive the order in the said writ petition then the petitioner company verified with counsel and came to know that when the matter was listed on 02.09.2004. our counsel's name not printed in the cause list. As such our counsel could not attend the matter for final hearing and argue the matter on merits. Only after receiving the order copy then only came to about the discrepancy in the matter. After receive the order in the above mentioned writ petition the petitioner company take steps to file appeal against the order in W.P.No.8118 of 1995. As the petitioner company is closed no proper person is there to take steps to file an appeal within the stipulated time, only after obtaining the approval from head office the petitioner company filed an appeal as such there is a delay of _____ days in filing an appeal against the order in W.P.No.8118 of 1995. The petitioner company is having good case in appeal. Without giving an opportunity to the petitioner company to contest writ petition an order has been passed in the absence of the petitioners which is not maintainable and liable to be set aside. Not filing an appeal with in the stipulated time is neither willful nor wanted but due to the abovementioned circumstances beyond control of the petitioner company herein. As such it is just and necessary to condone the delay of 443 days in filing an appeal in the interest of justice"

-

-

-

-

-

Since the aforementioned averments have not been controverted, we are

inclined to hold that the cause shown by the applicant is sufficient, and by applying the ratio of the judgments of the Supreme Court in **COLLECTOR, LAND ACQUISITION Vs. ANANTNAG V. KATIJI (1)** and **STATE OF HARYANA Vs. CHANDRA MANI (2),** we condone the delay in filing of the appeal

-

WAMP.NO. 4532 OF 2005:

Dispensed with.

-

WA NO.44 OF 2006:

With the consent of the learned counsel for the parties, the appeal has been taken up for hearing.

This appeal is directed against the order dated 02.09.2004 passed by the learned single Judge whereby he partly allowed W.P.No.8118 of 1995 filed by respondent Nos. 1 to 9 questioning the proceedings of acquisition and passed the following order.

1. AIR 1987 SC 1353.
2. AIR 1996 SC 1623.

> " Accordingly, the writ petition is allowed. However, having regard to the fact that the lands of the petitioners were acquired long back, it is not proper at this stage to disturb the beneficiaries of the land for whose benefit the land in question was acquired. Therefore, the respondents are directed to pay the compensation to the petitioners in accordance with the provisions of the Land Acquisition Act in respect of the land in

question. No costs".

The appellant has challenged the order of the learned single Judge on several grounds including the one that on the date of hearing i.e., 02.09.2004 the name of its counsel was not shown in the cause list and on that account he could not appear and make his submissions.

Learned counsel appearing for the writ petitioners (respondent Nos.1 to 9 herein) and the learned Government Pleader fairly state that name of the counsel for the appellant, which was respondent No.5 in the writ petition, had not been shown in the cause list of 02.09.2004.

In view of the fair statement made by the learned counsel for the respondents, we are inclined to hold that the order under challenge is vitiated due to violation of rules of natural justice.

In view of the above conclusion, we do not think it necessary to deal with the other points raised by the appellant for challenging the order of the learned single Judge and feel that the ends of justice would be met by setting aside the impugned order with a direction that W.P.No.8118 of 1995 may be listed for re-hearing before an appropriate Bench on 06.02.2006. Ordered accordingly.

The appeal is disposed of in the manner indicated above. No costs.

G.S. SINGHVI. CJ

G. BHAVANI PRASAD. J

Dated: 04.01.2006.

VRK.

-

-

-

-

-

HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

WAMP.Nos.4531 & 4532 OF 2005

AND

W.A (SR) NO.142833 OF 2005.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

Dt: 04-01-2006.

-